

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JAN 15 2008

JAMES W. McCORMACK, CLERK
By: *Doachen* DEP CLERK

**MONSANTO COMPANY and
MONSANTO TECHNOLOGY L.L.C.
Plaintiffs,**

VERSUS

**JOE KYLE, a/k/a JOEY KYLE,
BILLY KYLE a/k/a BROTHER KYLE
a/k/a BROTHER BILLY KYLE
JOE-CO; J & B AG, INC.; and
J & C AG, INC.
Defendants.**

CASE NO.: 2-04-CV-208

CONSENT PERMANENT INJUNCTION

I. PARTIES

A. Plaintiff, Monsanto Company, is a company organized and existing under the laws of the State of Delaware with its principal place of business in St. Louis, Missouri. Monsanto is authorized to do and is doing business in Arkansas and in this judicial district. Plaintiff, Monsanto Technology, LLC is a company organized and existing under the laws of the State of Delaware with its principal place of business in St. Louis, Missouri. Hereinafter, plaintiffs will be referred to jointly as Monsanto.

B. Defendant, JOE KYLE, is a natural person and engages in commercial farming and resides in Woodruff County, Arkansas.

C. Defendant, BILLY KYLE, is a natural person and engages in commercial farming and resides in Woodruff County, Arkansas.

D. Defendant, JOE-CO FARMS, is a partnership owned and operated by JOE KYLE, COLLEEN KYLE, J & B AG, INC., and J & C AG, INC., with its principal place of business in Woodruff County, Arkansas.

E. Defendant, J & C AG, INC. is a corporation organized and existing under the laws of the State of Arkansas, with its principal place of business in Woodruff County, Arkansas.

F. Defendant, J & B AG, Inc. is a corporation organized and existing under the laws of the State of Arkansas, with its principal place of business in Woodruff County, Arkansas.

H. Hereinafter defendants will be referred to collectively as the Kyles, or as defendants.

II. STIPULATED FINDINGS

A. Subject matter jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §1331, in that one or more of Monsanto's claims arise under the laws of the United States, as well as 28 U.S.C. §1338, granting district courts original jurisdiction over any civil action regarding patents.

B. Venue is proper in this judicial district as the events giving rise to the claims occurred in this judicial district and all defendants reside and are subject to personal jurisdiction in this judicial district.

C. Monsanto is in the business of developing, manufacturing, licensing, and selling agricultural biotechnology, agricultural chemicals and other agricultural products. After the investment of substantial time, expense, and expertise, Monsanto has

invented novel biotechnologies consisting of genetic traits that have been inserted into crop seed, such as corn, cotton, soybeans, alfalfa, canola, and sugarbeets. These genetic traits enable crops to express herbicide resistance, and/or insect resistance. Monsanto continues to research, develop, and invent novel biotechnologies for agricultural crops and expects such research, development and inventive activities to result in traits that will be inserted or used in agricultural crops in the future.

D. Monsanto's patented and/or proprietary traits that have been inserted or utilized in crop seed are currently marketed by Monsanto as the following: YieldGard® Corn Borer®, YieldGard® Corn Borer® with Roundup Ready® Corn 2, YieldGard® Rootworm, YieldGard® Rootworm with Roundup Ready® Corn 2, YieldGard® VT Rootworm/RR2, YieldGard® Plus with Roundup Ready® Corn 2, YieldGard® VT Triple, Roundup Ready® Corn 2, Bollgard® Cotton, Bollgard® II Cotton, Bollgard® with Roundup Ready® cotton, Bollgard® II with Roundup Ready® cotton, Roundup Ready® cotton, Roundup Ready® Flex cotton, Bollgard II with Roundup Ready® Flex cotton, Roundup Ready® soybeans, Roundup Ready® alfalfa, Roundup Ready® spring canola, Roundup Ready® winter canola, and Roundup Ready® sugarbeets.

E. Monsanto's biotechnologies and traits are protected under patents issued by the United States Patent Office, specifically including U.S. Patent No. 5,352,605. Prior to the events giving rise to this action, the '605 patent was issued, and assigned to Monsanto Technology, LLC and Monsanto Company was the exclusive licensee from the owner and was authorized to enforce the rights relating thereto, including seeking injunctive and monetary relief and remedy for the infringement thereof.

F. Monsanto licenses its patented and/or proprietary biotechnologies and traits in crop seed to farmers through a limited use license agreement.

III. PERMANENT INJUNCTION

It is hereby ordered that defendants may seek a license for the use of Pioneer Hi-Bred or Syngenta branded crop seed that contain Monsanto's patented and/or proprietary genetic traits and/or biotechnology, and if obtained defendants shall comply with all terms of any such license, but shall only use those traits that are currently licensed to Pioneer Hi-Bred or Syngenta by Monsanto. With the exception of Pioneer Hi-Bred or Syngenta crop seed, it is hereby ordered that defendants are permanently enjoined from purchasing, obtaining, using, planting and/or cleaning any crop seed containing Monsanto patented and/or proprietary genetic traits and/or biotechnology.

It is further ordered that defendants are also permanently enjoined from purchasing, obtaining, using, planting and/or cleaning any crop seed containing any trait that is developed by Monsanto in the future.

Any violation of this Permanent Injunction by defendants shall constitute patent infringement by the offending party.

Little Rock, Arkansas, this 15 day of January, 2007.


UNITED STATES DISTRICT JUDGE

Approved:

Respectfully submitted,



MILES P. CLEMENTS, T.A. (La. Bar No.4184)

MICHAEL R. PHILLIPS (La. Bar No. 21020)

JOEL E. CAPE (La. Bar No. 26001)

Frilot L.L.C.

Suite 3600,

1100 Poydras St.

New Orleans, LA 70163-3600

Telephone: (504) 599-8000

Facsimile: (504) 599-8100

And

JOHN K. BAKER (Ar. Bar No. 97024)

Mitchell, Williams, Selig,

Gates & Woodyard, P.L.L.C.


425 West Capitol Avenue, Suite 1800

Little Rock, Arkansas 72201

Telephone: (501) 688-8800

Facsimile: (501) 918-7850

**ATTORNEYS FOR MONSANTO COMPANY
AND MONSANTO TECHNOLOGY L.L.C.**



JOHN C. EVERETT (Ar. Bar No. 70022)

EVERETT, WALES & MITCHELL

P.O. Box 8370

Fayetteville, AR 72703

Telephone: (479) 443-0292

**ATTORNEYS FOR JOE KYLE, a/k/a JOEY KYLE,
BILLY KYLE a/k/a BROTHER KYLE a/k/a
BROTHER BILLY KYLE, JOE-CO; J & B AG, INC.;
and J & C AG, INC.**